

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

No. 7:08-CR-45-1-F  
No. 7:12-CV-190-F

DACIOUS LAMONT SMITH,                     )  
  Petitioner,                     )  
  )                     )  
  v.                     )  
  )                     )  
UNITED STATES OF AMERICA,                )  
  Respondent.                )

**ORDER**

The petitioner's motion to vacate the conviction and sentence imposed on **Count Three**, pursuant to 28 U.S.C. § 2255 [DE-71], is ALLOWED. It is ORDERED that petitioner's conviction as to Count Three is VACATED. See Government's Response [DE-29]. The Judgment [DE-44] entered herein on January 7, 2009, is AMENDED to reflect that the conviction and sentence imposed therein as to Count Three only is STRICKEN.

The petitioner's request therein for resentencing under the Fair Sentencing Act of 2010 as to **Count One** [DE-71], however, is DENIED.

SO ORDERED.

This, the 8th day of November, 2012.

  
\_\_\_\_\_  
JAMES C. FOX  
Senior United States District Judge